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Wigton Speed & Mill Motion
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SUPREME COURT OF THE UNITED STATES.

No. ~~200.~~ 67.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

JOHN D. RODDY AND DANIEL WYAND.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 260.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

JOHN D. RODDY AND DANIEL WYAND.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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1 Among the rolls, records, and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, in the third circuit, may be found the following words and figures, viz:

THE UNITED STATES, plaintiff in error,
vs.
JOHN D. RODDY and DANIEL WYANT, defendants in error.

No. 79, of May term, 1862. Writ of error to reverse the decision of the district court of the United States for the western district of Penn'a.

Copy of precipe for writ of error.

JOHN D. RODDY and DANIEL WYANT, pl'ffs in error and defendants below,
vs.
UNITED STATES OF AMERICA, defendants in error and plaintiffs below.

Issue writ of error to the district court of the United States for the western district of Penn'a, returnable to May term, 1862.

ROSS FORWARD,
Att'y for Pl'ffs in Error.

To H. SPROUL,
Cl'k Circ't Court, West. Dist.

2 John D. Roddy, one of the above pl'ffs in error, being duly sworn, deposeth and saith, that the writ of error in this case is not intended for delay.

JOHN D. RODDY.

Affirmed and subscribed the day of May, 1862, before me.
J. H. BAILEY,
U. States Com'r.

John D. Roddy, S. S. Wharton, Edward Scull, and Cyrus Myers each acknowledges himself to owe and stand indebted to the United States in the sum of fifteen hundred dollars, to be levied of their goods and chattels, lands and tenements, respectively, upon this condition: that the plaintiffs in error, John D. Roddy and Daniel Wyant, shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good.

JOHN D. RODDY.
EDWARD SCULL.
CYRUS MYERS.
S. S. WHARTON.

Taken and acknowledged the 8th day of May, 1862, before me.
WILSON McCANDLESS,
U. S. Dist. Judge.

Whereupon the following writ of error was issued:

3 UNITED STATES OF AMERICA,
Western District of Pennsylv'a, ss:

[SEAL.] *The President of the United States to the judge of the district court of the United States for the western district of Pennsylvania:*

Because in the record and process, as also in the rendition of the judgment in a suit before you, between the United States, plaintiff, and John D. Roddy and Daniel Wyand, defendants, in a plea of debt, a manifest error hath intervened, to the great damage of the said defendants, as in and by their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment therein be given, then, under your seal, you distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the president judge of the circuit court of the United States, on the second Monday of May next, at the city of Pittsburgh, in the third district, that, the record and process aforesaid being inspected, he may cause to be done thereupon what of right ought to be done.

Witness the Hon. R. B. Taney, chief justice of the Supreme Court of the United States, at Pittsburgh, this 9th day of May, 1862.
H. SPROUL, *Clerk.*

4 *Copy of record from the district court.*

In the district court of the United States in and for the western district of Pennsylvania.

THE UNITED STATES OF AMERICA *vs.* HARVEY C. MARKS, late postmaster at Somersett, Somersett co., Pennsylvania, and DANIEL WYAND and JOHN D. RODDY, of the same place, sureties.	At No. 1, of October term, A. D. 1861.

Among the rolls, records, and judicial proceedings of the said district, at the above number and term, may be found the following words and figures, to wit:

Precipe.

THE UNITED STATES OF AMERICA
vs.
HARVEY C. MARKS, late postmaster at Somerset, Somerset co., Penn'a, and DANIEL WYAND and JOHN D. RODDY, of the same place, sureties.

No. 1, of October term, 1861.

Issue summons—debt on official bond—returnable to the first Monday of July prox.

R. B. CARNAHAN,
U. S. Attorney.

To J. H. BAILEY, Esq., *Clerk.*

5 *Declaration.*

In the district court of the United States in and for the western district of Pensylvania—No. 1, of October term, 1861.

UNITED STATES OF AMERICA,
Western District of Pensylvania, ss:

Harvey C. Marks, late postmaster at Somerset, Somerset county, in the said district, and Daniel Wyand and John D. Roddy, late of said district, yeomen, were summoned to answer the United States, of a plea that they render unto said plaintiffs the sum of six hundred dollars, which they owe to and unjustly detain, &c.

Whereupon said plaintiff, by R. B. Carnahan, their attorney, complains for that, whereas the said Harvey C. Marks, Daniel Wyand, and John D. Roddy, heretofore, to wit, on the seventeenth day of June, A. D. 1853, at Somerset, Somerset county, in the district aforesaid, by their certain writing obligatory, sealed with the seals of the said Harvey C. Marks, Daniel Wyand, and John D. Roddy, and to the court now here shown, the date whereof is the same day and year aforesaid, did acknowledge themselves to be held and firmly bound, jointly and severally, unto the United States of America, in the just and full sum of six hundred dollars, for the payment whereof, well and truly to be made, the said Harvey C. Marks, Daniel Wyand,
6 and John D. Roddy did bind themselves, their heirs, executors, and administrators, jointly and severally, by the said writing obligatory, the condition of which said writing obligatory was in the words following, to wit: "The condition of this obligation is such, that whereas the above-bounden Harvey C. Marks is postmaster at Somerset' aforesaid, now if the said Harvey C. Marks shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures, as postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General, in his several instructions to postmasters, and shall pay the balance of all moneys that shall come into his hands for the postage of whatever is by law

chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being, and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds, than as allowed by law, all the public money collected by him or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and, when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed, and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts
7 and things as may be required of him by the Postmaster General, and, moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers, which he, as postmaster, or as agent and depositary, as aforesaid, shall receive for the use and benefit of the said Post Office Department, then the above obligation shall be void; otherwise, of force."

And the said plaintiff, by their said attorney, do aver that the said Harvey C. Marks hath not well and truly executed the duties of said office according to law and the instructions of the Postmaster General, and hath not faithfully, once in three months, or oftener, as he was required to do, rendered accounts of the receipts and expenditures, as postmaster, to the Post Office Department, in the manner and form presented by the Postmaster General, in the several instructions to postmasters, and hath not paid the balance of all moneys that came to his hands for the postage of whatever was by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; nor hath he safely kept, without loaning, using, depositing in banks, or exchanging for other funds, than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same
8 was ordered by the Postmaster General to be transferred or paid out; and hath not, when such orders for transfer or payment was received, faithfully and promptly made the same as directed; and hath not faithfully done and performed, as agent and depositary for the Post Office Department, all such acts and things as were required of him by the Postmaster General; and, moreover, hath not faithfully accounted with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers, which he, as postmaster, and as agent and depositary, as aforesaid, received for the use and benefit of the said Post Office Department.

By virtue whereof, and by force of the acts of Congress of the United States of America in such case made and provided, the said defendants became bound to pay the said plaintiff the aforesaid several sums of money when thereto afterwards requested. Nevertheless, the aforesaid defendants, although often requested, have not paid the aforesaid sum of money, or any part thereof, to said plaintiffs;

but to pay the same to said plff's hitherto have refused, and still do refuse.

Whereupon said plaintiffs say they are worse, and have damage to the value of six hundred dollars; and therefore they bring suit, &c. And the said plaintiffs bring here into court the legal evidence of said writing obligatory aforesaid, the date whereof is the same day and year aforesaid.

ROBERT B. CARNAHAN,
Attorney of the United States
for the western district of Pennsylvania.

Endorsed: Filed June 28th, 1861.

Bond.

Know all men by these presents that we, Harvey C. Marks, of Somerset, in the county of Somerset, State of Pennsylvania, and Daniel Wyand and John D. Roddy, of the same place, are held and firmly bound unto the United States of America in the just and full sum of six (6) hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

In witness whereof, we have hereunto subscribed our names and affixed our seals this 17th day of June, in the year of our Lord one thousand eight hundred and fifty-three.

The condition of this obligation is such that, whereas the above-bounden Harvey C. Marks is postmaster at Somerset, aforesaid, now if the said Harvey C. Marks shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, or oftener if thereto required, make accounts of his receipts and expenditures, as postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come into his hands for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being, and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out, and, when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully account with the United States, in the manner directed by the Postmaster General, for all moneys, postage stamps, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers, which he, as postmaster, or as agent and depositary, as aforesaid,

shall receive for the use and benefit of the Post Office Department, then the above obligation to be void; otherwise, of force.

J. C. MARKS. [SEAL.]
D. WYAND. [SEAL.]
JOHN D. RODDY. [SEAL.]

Witness:
E. O. NEAL.
GEO. B. FUNDENBURG.

11 I hereby certify that I am well acquainted with Daniel Wyand and John D. Roddy, who have signed the foregoing bond with their pecuniary condition, and that they are good and sufficient sureties, severally, for double the amount of the penalty in the foregoing bond.

E. O. NEAL,
Justice of the Peace.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST OFFICE DEPARTMENT.

I, Green Adams, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct copy of the original bond of Harvey C. Marks, late postmaster at Somerset, in the State of Pennsylvania, now on file in this office.

In testimony whereof, I have hereunto signed my name and caused [SEAL.] to be affixed my seal of office, at the city of Washington, this 31st day of May, in the year of our Lord one thousand eight hundred and sixty-one.

G. ADAMS,
Auditor of the Treasury for the P. O. Department.

Endorsed: Filed June 5, 1861.

12 STATEMENT OF ACCOUNT.

Dr. Harvey C. Marks, late postmaster at Somerset, Pennsylvania, in account with the United States.

1853.	To balance due on his quarterly returns, as p. m. from July 1 to Sept. 30, 1853	$51 70
October 25.	Draft on J. Cummings	76 10
	Ac. from Oct. 1 to Dec'r 31	64 61
	Jan'y 1 to March 31, 1854	97 47
	April 1 to June 30, "	51 17
	July 1 to Sept. 30, "	84 01
	Oct. 1 to Dec'r 31,	53 29
1855.		
Jan. 3.	Draft on S. C. Miller	1 94
	Ac. from Jan. 1 to March 31, 1855	96 13
	April 1 to June 30, "	67 31
	July 1 to Sept. 30, "	88 01
	Oct. 1 to Dec'r 31, "	59 02

1856.		
February 11.	Draft on L. M. Stoller	$2 46
	Postages received from January 1 to March 31, 1856, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $96 13, being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32 section of the act of March 3, 1825	192 26
13	Bro't forward	985 48
	Ac. from April 1 to June 30, 1856	247 17
	Postages received from July 1 to September 30, 1856, for which he neglected to render his account in the form and manner prescribed by law, and the Postmaster General's instructions conformable therewith, and which therefore are charged at $88 01, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32 section of the act of March 3, 1825	176 02
	Postages received from Oct. 1st to Dec'r 31, 1856, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $59 02, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32 section of the act of March 3d, 1825	118 04
	Postages received from January 1st to March 31, 1857, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $96 13, being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreebly to the 32d section of the act of March 3d, 1825	192 26
	Ac. from April 1st to June 30, 1857	439 49
		2,158 46

14	To amount bro't forward	$2,158 46
	Postages received from July 1 to Sept. 30, 1857, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $88 01, that being the value of the postages arising at the same office in an equal period of time, and which are doubled, agreeably to the 32 section of the act of March 3d, 1825	176 02
	Postages received from Oct. 1st to Dec'r 31st, 1857, for which he neglected to render his accounts in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $59 02, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32 section of the act of March 3d, 1825	118 04
	Postages received from January 1st to March 31, 1858, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions in conformity therewith, and which therefore are charged at $96 13, that being the value of the postages arising at the same office in an equal portion of time, and which is doubled, agreeably to the 32 section of the act of March 3, 1825	192 26
	Postages received from April 1 to June 30, 1858, for which he rendered no account in the form and manner prescribed by law, and by the Postmaster General's instructions in conformity therewith, and which therefore are charged at $439 49, that being the value of the postages arising at	
15	the same office in an equal portion of time,	
	Amount bro't forward	$2,644 78
	and which are doubled, agreeably to the 32d section of the act of March 3d, 1825	878 98
	Postages received from July 1 to Sep. 30, 1858, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions in conformity therewith, and which therefore are charged at $88 01,	

	that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32 section of the act of March 3d, 1825	$176 02
	Postages received from Oct. 1 to December 31, 1858, for which he rendered no account in the form and manner prescribed by law, and by the Postmaster General's instructions conformably therewith, and which therefore are charged at $59 02, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32d section of the act of March, 1825	118 04
	Postages received from January 1st to March 31, 1859, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $96 13, that being the valueof the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32d section of the act of March 3d, 1825	192 26
1858.		
December 13.	Draft on H. Craven	14 25
		4,024 33
16	Amount bro't forward,	4,024 33
	To postages received from April 1st to June 30, 1859, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which are therefore charged at $439 49, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the act of the 3d March, 1825	898 98
	Postages received from July 1st to Sept. 30, 1859, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which are therefore charged at $88 01, that being the value of the postages arising at the same office in an equal	

	portion of time, and which is doubled, agreeably to the 32d section of the act of March 3d, 1825.....	$176 02
	Postages received from Oct. 1st to Dec. 31, 1859, for which he neglected to render his account in the form and manner prescribed by law and by the Postmaster General's instructions conformable therewith and which is therefore charged at $59 02, that being the value of the postages arising at the same office in an equal portion of time, and which is doubled, agreeably to the 32d section of the act of March 3d, 1825.....	118 04
17	Postages received from Jan'y 1st to March 31st, 1860, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $96 13, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32d section of the act of March 3d, 1825.....	192 26
	Postages received from April 1st to June 30th, 1860, for which he neglected to render his account in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, and which therefore are charged at $439 49, that being the value of the postages arising at the same office in an equal portion of time, and which are doubled, agreeably to the 32d section of the act of March 3d, 1825.....	878 98
1860. June 30.	Stamps on hand and unaccounted for, from July 1, 1857, to June 30, 1860.....	1,679 47
		7.948 08

Harvey C. Marks, late postmaster at Somerset, Pennsylvania, in account with the United States.

1853.		Cr.	Dr.
Oct. 5.	By amount paid Acheson & Beale	$45 00	$7,948 08
Dec'r 14.	" draft, favor Peter Boyles.....	1 64	
1854.			
Jan'y 6.	By amount paid Acheson & Beale	134 12	
Mar. 17.	" draft, favor Wm. J. Anthony..	9 61	

April	7.	By amount paid Acheson & Beale	$55 00	
July	7.	ditto	55 00	
Oct.	9.	ditto	53 00	
18				
1855.				
Jan'y	6.	By am't paid Acheson & Beale	50 00	
April	4.	ditto	75 00	
July	7.	ditto	80 00	
Oct.	4.	ditto	52 00	
1856.				
Jan'y	23.	By am't paid Acheson & Beale	72 00	
April	9.	ditto	80 00	
July	9.	ditto	80 00	
1857.				
Feb'y	12.	By draft favor Isaac Hughes	30 00	
Mar.	11.	" J. W. Evastun	19 51	
May	2.	" G. Miller	49 12	
July	17.	By amount paid Gormon, Wright & Danford	200 00	
Oct.	9.	By amount paid Burford & Wright	70 00	
1858.				
Jan'y	7.	ditto	71 75	
April	14.	ditto	72 50	
July	12.	ditto	72 59	
Nov.	1.	ditto	70 39	
1859.				
Jan'y	14.	ditto	85 00	
April	20.	ditto	70 15	
July	25.	ditto	65 35	
1860.				
Feb.	25.	ditto	121 53	
April	14.	ditto	60 37	
July	2.	ditto	50 53	
		Balance	5,999 42	
			7,948 08	7,948 80

19 *Harvey C. Marks, late postmaster at Somerset, Pennsylvania, in account with the United States, Dr.*

To balance due the United States $5,999 42

Interest from June 30, 1860.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST OFFICE DEPARTMENT.

I, Green Adams, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct statement of the account of Harvey C. Marks, late postmaster at Somerset, in the State of Pennsylvania, as audited and adjusted in this office.

In testimony whereof, I have hereunto signed my name, and caused

to be affixed my seal of office, at the city of Washington, this 31st day of May, in the year of our Lord one thousand eight hundred and sixty-one.

G. ADAMS,
Auditor of the Treasury for the P. O. Department.

Endorsed: Filed June 5, 1861.

20 UNITED STATES,
Western District of Pennsylvania, sct:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that you summon Harvey C. Marks, late [SEAL.] postmaster at Somerset, Daniel Wyand and John D. Roddy, his sureties, late of your district, if they may be found therein, so that they be and appear before the judges of the district court of the United States in and for the western district of Pennsylvania, at a session of the same came court, to be holden at Pittsburg, on the first Monday of July next, to answer to the United States of America of a plea of debt. And have you then and there this writ.

Witness the honorable Wilson McCandless, esquire, judge of the district court of the United States for the western dist. of Pa., at Pittsburg, this fifth day of June, A. D. 1861, and in the 85th year of the independence of the said United States.

JOHN H. BAILEY, *Clerk.*

Endorsed: Filed July 3, 1861.

Return thereto.

I, . June 27, 1861, served the within writ personally and by copy on Harvey C. Marks, Daniel Wyand, and John D. Roddy. Each of the def'ts so answers.

A. MURDOCK, *Marshal, per Deputy.*

Fees, $13 86.

21 *Affidavit of defence.*

In the district court of United States for the western district of Pa.

UNITED STATES OF AMERICA *vs.* HARVEY C. MARKS, late postmaster at Somerset, Pa., Dan'l Wyand and John D. Roddy, his sureties.	No. 1, October term, 1861.

SOMERSET COUNTY, *ss:*

Personally appeared before me, the subscriber, president judge of the sixteenth judicial district of Pennsylvania, composed of the counties of Franklin, Fulton, Bedford, and Somerset, Harvey C. Marks, who, being duly sworn, doth depose and say that the above-named defendants have a just and legal defence to the whole cause of action on the part of the United States. And further saith not.

H. C. MARKS.

Sworn and subscribed before me this 28th day of June, A. D. 1861, before me.

F. M. KIMMELL.

Endorsed: Filed June 29, 1861.

22 *Order for judgment.*

UNITED STATES
vs.
HARVEY C. MARKS *et al.* } No. 1 of October term, 1861.

And now, to wit, August 20th, 1861, it appearing to the court that the writ in this case has been duly served, and that no plea has been pleaded, on motion of R. B. Carnahan, attorney for the United States, it is decreed that final judgment be entered against the defendants in favor of the plaintiff, sum due to be liquidated by the clerk, by the statement of claim filed.

Entry thereof.

August 20, 1861. Judgment in favor of the plaintiff, against the defendant, for want of a plea; sum due to be liquidated by the clerk.

August 20, 1861. Judgment in favor of the plaintiff, against Harvey C. Marks, Daniel Wyand, and John D. Roddy, for six huudred dollars, ($600 00.)

Precipe for fi. fa.

UNITED STATES
vs.
HARVEY C. MARKS, late postmaster at Somerset, DANIEL WYAND and JOHN D. RODDY, his sureties. } No. 1, October term, 1861.

Issue fi. fa. for debt, interest, and costs, returnable to the first Monday of May next.

R. B. CARNAHAN,
U. S. Att'y.

J. H. BAILEY,
Clerk U. S. Court, West. Dist. of Pa.

Filed Jan'y 13, 1862.

23 UNITED STATES,
Western District of Pennsylvania, sct:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that of the goods and chattels, lands and [SEAL.] tenements, in your district of *in your district of* Harvey C. Marks, Daniel Wyand, and John D. Roddy, late of your district, you cause to be made and levied, as well a certain debt of six hundred dollars, which the United States of America, in the district court of the United States in and for the western district of Pennsylvania, before the judge of the said court, by the consideration of the same judge, lately recovered against the said Harvey C. Marks.

Daniel Wyand, and John D. Roddy, as the sum of forty-two dollars and seventy-six cents, which to the said United States of America, in the said court, was in like manner adjudged for their damages which they had sustained by occasion of the detention of that debt, whereof the said Harvey C. Marks, Daniel Wyand, and John D. Roddy are convict, as appears of record. And have you those moneys before the said judge, at a session of the same court, to be holden at Pittsburg, on the fifth Monday of —— next, for their debt and damages aforesaid. And have you then there this writ.

Witness the honorable Wilson McCandless, esquire, judge of the United States for the west. dis't of Pa., at Pittsburg, this 13th day of January, A. D. 1862, and in the 86th year of the independence of the United States.

JOHN H. BAILEY, *Clerk.*

24 *Order for to open judgment.*

And now, to wit, February 21st, 1862, on motion of John D. Roddy, the court open the judgment against the sureties, viz: Daniel Wyand and John D. Roddy, and they let into a defense. Fi. fa. stayed; the lien to remain.

Pleas of defendants.

And now, to wit, February 21st, 1862, the defendants, by their counsel, John D. Roddy, come and defend the wrong and injury, when, &c., and plead as follows, to wit :

1st. That the defendants have well and truly executed the duties of the said office, according to law, and the instructions of the Postmaster General, and that they have faithfully, once in three months, or oftener, as he, the said Harvey C. Marks, was required, rendered accounts and expenditures, as postmaster, in manner and form as required. And the said Harvey C. Marks says that he has paid all moneys and balances of money that came into his hands for the postages of whatever was by law chargeable with postage as aforesaid in the manner prescribed, &c., &c. And he further says, that he has safely kept, without loaning, using &c., &c., all the public funds collected by him, or otherwise at any time placed in his possession and custody, &c. And further says, that he has faithfully done and performed, as agent and depositary for the Post Office Department, all such acts and things as were required of him by the Postmaster General; and, moreover, that he has faithfully accounted with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, stamped envelopes, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers which he, the said Harvey C. Marks, as postmaster and agent and depositary, as aforesaid; received for the use and benefit of the said Post Office Department. Of all which said defendants put themselves upon the country, &c.

25

And as a further plea in this behalf, the said Daniel Wyand and

John D. Roddy, the sureties of the said Harvey C. Marks, come and plead that the United States of America, the plaintiff aforesaid, ought not to have or further maintain the aforesaid action against them, because the suit was not brought within the statuary period. And of this they put themselves upon the country, &c.

JOHN D. RODDY.
Att'y for Defendant.

FEBRUARY 21, 1862.

Endorsed: Filed Feb'y 21, 1862.

26 *Affidavit of def't.*

UNITED STATES OF AMERICA
vs.
HARVEY C. MARKS. } Nos. 1 and 2.

Harvey C. Marks, the def't, being duly sworn, saith:

The summons in this case was served on me at my residence in the borough of Somerset, in the presence of John D. Roddy, esq., an attorney-at-law, and a co-defendant in the same case. I depended upon him to do all that would be required in order to make a defence in the case, he having then said he would have it attended to. A short time afterwards Mr. Roddy came to me, and after talking over the case, drew up an affidavit, which stated in substance that we had a just defence to the whole amount of the claim. This affidavit I signed, and was sworn to before Judge Kimmel; and Roddy told me then he was going to send it to Mr. Swartzwelder, and said that this was all that could be required of me now in the case. I always supposed that this affidavit had been sent, and that everything was going on right.

The next thing I heard of the case, Mr. Roddy came to my shop about January last, and said he had been up to Pittsburgh. I asked him then how the case stood, to which he replied he had just got up
in time to save a judgment; that Mr. Cowan had promised to
27 attend to the case, but had neglected to do so. That if he had not gone up to Pittsburgh there would have been a ca. sa. issued. Well, said I, how did you get it fixed? to which he replied, Oh, I got the judgment opened, and now we will not have to go up to May term. I asked him if there was any doubt about the matter being all right until the May term, to which he replied, there was not

Affiant further states that he verily believes he has no money due the United States in his hands; that upon a fair and just settlement of his accounts with the Post Office Department it will be found that he has paid over to the department, after the close of each quarter, all the money due them remaining in his hands.

H. C. MARKS.

Sworn and subscribed this 12th day of April, 1862, before
H. C. SPROUL,
U. S. Com'r.

Endorsed: Filed April 12, 1862.

28 *Motion to open judgment.*

UNITED STATES
vs.
HARVEY C. MARKS. } Nos. 1 and 2, Oct., 1862.

Messrs. Swartzwelder and Farword moved the court to open the judgment in these cases, and allow the defendant an opportunity to make a defence, and that in the mean time proceeding be stayed.

Order thereon.

And now, to wit, April 12th, 1862, it is ordered by the court rule absolute upon payment of all the costs which have accrued to this date, the cause to be placed on the list for trial at the May term, and notice of trial now at bar.

Motion to modify order.

April 17, 1862. Ross Farword moves the court to modify the order of April 12th, 1862, in regard to the opening of judgments in these cases, so as to require only the payment of costs accrued since the entry of judgment.

And now, April 17th, 1862, motion granted, and order modified accordingly.

29 *Trial.*

And now, May 6th, 1862, this case being at issue, a jury being called, came, viz: Frank Wylie, Samuel Speice, John Bilger, David Irwin, John Vandegrift, Thomas Mellen, Alexander McKee, A. B. McCollum, Wm. Graham, Jacob Slagle, George Painter, and Alexander Simpson, twelve good and lawful men of the western district of Penn'a, who, having been duly summoned, returned, and impannelled, were sworn and affirmed to try the issue herein joined between the United States and Daniel Wyand and John D. Roddy, sureties of Harvey C. Marks.

Request for instructions.

The court is respectfully requested to charge the jury, that the Postmaster General having failed to institute suit against H. C. Marks, the postmaster, and his sureties, for more than two years after the first default of said postmaster, there can be no recovery in this case against John D. Roddy and Daniel Wyand, the sureties, and their verdict must be for defendants.

ROSS FARWORD, *Att'y for Def'ts.*

Answer to def'ts' point.

The court refuse so to instruct the jury, but charge them,
30 that the limitation contained in the proviso to the 3d section of the act of March 3d, 1825, is a bar to the recovery of the

several balances accruing more than two years before the institution of the suit. For the sums which accrued within the two years the plaintiff is entitled to recover, not exceeding the penalty of the bond.

Verdict.

And now, May 7th, 1862, the jury empannelled in this case being called, and in the box, upon their oaths and affirmations, respectively, do say, that they find for the United States and against the defendants for the amount of the penalty of the bond, and assess the damages at six hundred dollars. And so they say all.

Judgment thereon.

May 7th, 1862. Judgment in favor of the United States and against the defendants, John D. Roddy and Daniel Wyand, for the sum of six hundred dollars.

31 *Bill of exceptions.*

UNITED STATES OF AMERICA *vs.* JOHN D. RODDY & DAN'L WYAND. } In the district court for the western district of Pennsylvania.

At a district court held at Pittsburgh on the 7th day of May, 1862, before the Hon. Wilson McCandless, district judge, the issue in this action came on to be tried by a jury of the district for that purpose impannelled, the parties appearing by their respective attorneys, the jury being duly chosen, called, and sworn to try the said issue.

And upon the trial of that issue, R. B. Carnahan, esq., attorney of the United States for the western district of Pennsylvania, to prove the said issue on part of the plaintiffs, gave in evidence an account or statement furnished by the Post Office Department of the United States, setting forth the claims of the United States against Harvey C. Marks, late postmaster at Somerset, Pennsylvania, of whom the said defendants are sureties. In which said account and statement it is set forth and admitted that the said Harvey C. Marks was in default in that he had not made and furnished to the Post Office Department any quarterly account mails received at his office for the quarter ending June 30, 1856, nor for the several succeeding quarters ending on the 30 Sept., 1856; 31st December, 1856; 31st
of March, 1857; and continuing until the day of June,
32 1860, when he ceased to be postmaster.

These several defalcations standing charged against the postmaster unsatisfied and unsued for, the said defendants did insist that by the proviso of the 3d section of the act of March 3d, 1825, no action could be sustained against the said defendants, the sureties, because the act aforesaid operating as a statute of limitations, commenced to run immediately from and after the first default, and more than two years having elapsed before the institution of this suit against the bail, they are no longer liable.

And the defendants' counsel did pray the said judge to charge the jury, "that the Postmaster General having failed to institute suit Harvey C. Marks, the postmaster, and his sureties, for more than two years after the first default of said postmaster, there can be no recovery in this case against John D. Roddy and Daniel Wyand, the sureties, and their verdict must be for the defendants."

Whereupon the said judge did deliver his opinion to the said jury refusing so to instruct them, and further charging them "that the limitation contained in the proviso to the 3d section of the act of March 3, 1825, is a bar only to the recovery of the several balances accruing more than two years before the institution of the suit.

33 For the plaintiff is entitled to recover not exceeding the penalty of the bond."

To which said last-mentioned charge and opinion, the said defendants' counsel did then and there object and make the following exceptions:

1st. For that the court refused to charge the jury according to the prayer of the defendants' counsel.

2d. For that the court charged the jury that the proviso to the 3d section of the act of March 3d, 1825, did not bar the recovery of the balances, because of defaults accruing within two years before suit brought, notwithstanding there were defaults for years previous unsettled by said postmaster and upon which suit had not been brought by the Postmaster General.

Whereupon the said judge, pursuant to law, and at the request of defendants' counsel, hath put his seal to this bill of exceptions, this 7th day of May, A. D. 1862.

WILSON McCANDLESS. [SEAL.]
U. S. District Judge.

Endorsed: Filed May 7, 1862.

34 UNITED STATES OF AMERICA,
Western District of Penn'a, ss:

I, John H. Bailey, clerk of the district court of the United States, in and for the western district of Pennsylvania, do hereby certify that the annexed and foregoing record, process, and all things concerning them, in the suit of the United States against Harvey C. Marks, late postmaster at Somerset, State of Pennsylvania, and Daniel Wyand and John D. Roddy, his sureties, made up pursuant to the writ hereto annexed and herewith transmitted in obedience to the command thereof, is a just and accurate transcript of the original, as full and entire as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 12th day of May, A. D. 1862, and of our independence the sixty-sixth.

JOHN H. BAILEY, *Clerk.*

Fees, $7 $\frac{30}{100}$. Oct. 20, '62. Paid by Dan'l Wyand. J. H. B., *Clerk.*

35 *Writ of error to the district court.*

In the circuit court of the United States for the western district of Pennsylvania.

JOHN D. RODDY *et al.*
vs.
THE UNITED STATES. } No. 79 of May t., 1862.

And, now to wit, November 15th, 1862, this cause came up for argument before the honorable R. C. Grier, one of the justices of the Supreme Court of the United States and circuit judge of the third circuit, and was fully argued by John D. Roddy, esq., for the plaintiffs in error, and R. B. Carnahan, esq., United States attorney, for the defendants in error, and the court being fully advised in the premises, delivered the following opinion:

Opinion of the court.

In the C. C. U. S. for western district of Pennsylvania.—In error to the district court, western district of Penna.

JOHN D. RODDY *et al.*
vs.
THE UNITED STATES.

I think this case comes not only within the letter but within the spirit of the proviso to the third section of the act of 3d March, 1825. If default be made "at *any time*," and suit not brought in two years, the sureties shall not be liable to the United States, nor shall suit be instituted against them.

36 In this case the postmaster first made default on the 30th of June, 1857. He was permitted to remain in office three years without rendering an account or paying the balance of $2,155 16 then due.

Here was a case of gross negligence on the part of the officers of the General Post Office, against which it is obvious policy of the statute to protect the sureties.

The case of Jones *vs.* U. S., 7 How., 681, turned chiefly on the appropriation of payments. A running account had been kept, and the balance due on the last quarter was within the two years, so that the question now before us does not arise and was not decided.

In the case of the Postmaster General *vs.* Funull, 1st McLean, 217, Mr. Justice McLean has given the construction to this section of the act which it seems to me it fairly demands. He observes that the statute was adopted for the benefit of sureties and excite the utmost degree of vigilance in the department

The reason urged why statutes of limitation should not run against the government, is founded on a theory that it cannot be guilty of laches, and would be apt to suffer if the neglect of its servants to prosecute

its claims should be permitted to release the surety. But this is an enactment for the purpose of protecting innocent sureties against the results of official laches.

37 When a deputy postmaster becomes a large defaulter and is afterwards permitted, for three years, to continue in office without rendering an account or paying the balance previously due, it would be unjust to the sureties to make them the victims of such conduct in the officers of the government. It is the very evils from which the statute was intended to protect the surety.

A failure to institute suit in due season, discharges the surety from all liability on their bond, and prohibits a suit thereon after that time.

The judgment is reversed, and *ven. de novo* ordered if requested by plaintiffs below.

Per cur.

R. C. GRIER.
Circuit Judge.

To the foregoing opinion the attorney of the United States excepts, and prays the court to seal the following bill of exceptions, and allow a writ of error to the Supreme Court of the United States.

Bill of exceptions.

In the C. C. U. S., western district of Pa. No. 69, of May term, 1862.

UNITED STATES OF AMERICA, plaintiffs in error,
vs.
JOHN D. RODDY and DAN'L WYAND, def'ts in error.

38 Application to the honorable Robert C. Grier, associate justice of the Supreme Court of the United States, for an allocatæ for a writ of error to the judgment of the circuit court of the United States in the third circuit, sitting at Pittsburg, for the western district of Pennsylvania, at November term, 1862, on behalf of the United States.

Statement of the case.

On the fifth day of June, 1861, suit was brought by the United States against John D. Roddy and Daniel Wyand, sureties upon the official bond of H. C. Marks, late postmaster at Somerset, Pennsylvania, in the district court of the United States for the western district of Pennsylvania, to October term, 1861. The bond was in six hundred dollars, dated the 17 June, 1853, conditioned that the said Harvey C. Marks shall well and truly execute the duties of postmaster, according to law.

The declaration sets forth, generally, that the said Harvey C. Marks did not faithfully, once in three months, as he was required, render accounts of receipts and expenditures in the manner and form prescribed by the Postmaster General, and hath not paid the balance of all monies that came into his hands for postage.

39 The defendants plead that Harvey C. Marks having been a defaulter for more than two years previous to the time of suit brought against them, his sureties, that, under the proviso contained in the 3d section of the act of March 3d, 1825, they are no longer liable. It is as follows: *Provided*, That if default be made by the postmaster aforesaid at any time, and the Postmaster General shall fail to institute suit against such postmaster and his sureties for two years from and after such default shall be made, then, and in that case, the said sureties shall not be held liable to the United States, nor shall suit be instituted against them.

The account of the Post Office Department filed in the case was voluminous, but the following abstract will be sufficient to show the questions which arose in the case.

Charges previous to 1st January, 1856		$793 22
For quarter ending	31 March, 1856	192 26
	30 June, 1856	247 17
	30 Sept., 1856	176 02
	31 December, 1856	118 04
	31 March, 1857	192 26
$2,158,46	30 June, 1857	439 49
	30 Sept., 1857	176 02
	31 Dec'r, 1857	118 04
	31 March, 1858	192 26
	30 June, 1858	878 98
40	30 Sept., 1858	176 02
	31 Dec., 1858	118 04
	31 March, 1859	192 26
	30 June, 1859	878 98
	30 Sept., 1859	176 02
	31 Dec., 1859	118 04
	31 March, 1860	192 26
	30 June, 1860	878 98

Credits at sundry times, $1,948 66.

Applying the credits to the payments of the indebtedness, as charged by the department, the defaults up to 30 June, 1857, are not altogether satisfied at which time he owed $2,158 46. The 30th of June, 1859, two years afterwards, was claimed by the sureties as the latest day to which their liability extended, no suit having been brought until the fifth of June, 1861.

The cause was tried at Pittsburgh, on the 7th day of May, 1862, before the Hon. Wilson McCandless, district judge.

On the trial the defendants' counsel requested the court to charge the jury, "that the Postmaster General having failed to institute suit against H. C. Marks, the postmaster, and his sureties, for more than two years after the first default of said postmaster, there
41 can be no recovery in this case against John D. Roddy and Daniel Wyand, the sureties, and their verdict must be for the defendants."

The court refused to give the instructions prayed for, and charged the jury "that the limitations contained in the proviso to the 3d section of the act of 3d March, 1825, is a bar only to the recovery of the several balances accruing more than two years before the institution of the suit. For the sums which accrued within two years, the plaintiff is entitled to recover not exceeding the penalty of the bond." To which charge and instructions the defendants excepted, and made the following exceptions:

1st. That the court refused to charge the jury according to the prayer of the defendants' counsel.

2d. For that the court charged the jury that the proviso to the 3d section of the act of 3d March, 1825, did not bar the recovery of the balances because of defaults accruing within two years before suit brought, notwithstanding there were defaults for two years previous unsettled by said postmaster, and upon which suit had not been brought by the Postmaster General.

Whereupon, the said judge, pursuant to law, and at the
2 request of defendants' counsel hath put his seal to this bill of exceptions, this 7th day of May, A. D. 1862.

WILSON McCANDLESS,
[SEAL.] *U. S. District Judge.*

A verdict and judgment having been rendered for the pl'ff, for the amount of the bond, to be released upon the payment of the sum of six hundred dollars, the cause was removed to the circuit court for the same district, by the defendants below, and was argued before the circuit court, at November term, 1862, on the exceptions made by the defendants below to the rulings of the district court. Whereupon the judgment of the district court was reversed by the said circuit court; to which judgment of reversal, the United States, by Robert B. Carnahan, United States district attorney, makes the following exceptions, and prays that a writ of error may be allowed to remove said cause to the Supreme Court of the United States.

1st. The court erred in reversing the judgment of the district court, and in holding that the case comes not only within the letter, but within the spirit, of the proviso to the third section of the act of 3d March, 1825. If default be made at any time, and suit be not brought in two years, the sureties shall not be liable to the United States, nor shall suit be instituted against them.

43 2d. The court should have construed the proviso to the third section of the act of March 3d, 1825, to be a bar only to the recovery of the several balances accruing *more* than two years before the institution of the suit; and for the balances accruing within the two years, an action may be maintained, the statute interposing no bar.

3d. The United States are entitled to a writ of error in this case, because the act of Congress, which provides that no writ of error to a judgment of the circuit court, under two thousand dollars,

shall be allowed, does not apply to the sovereignty, and is binding only on private parties.

(See act of May 31, 1844, 5 Stats. at Large, 658, and United States *vs.* Bromley, 12 Howard, 88.)

ROBERT B. CARNAHAN,
U. S. Dis't Attorney.

Writ of error allowed.

R. C. GRIER.

Whereupon the following writ of error was issued and delivered to the marshal; also, a citation:

44 UNITED STATES OF AMERICA,
Western district of Pennsylvania, ss:

The President of the United States to the judges of the circuit court of the United States in and for the western district of Pennsylvania: [SEAL.]

Because in the record and process, as also in the rendition of the judgment in a suit before you, or some of you, between the United States, plaintiff, and John D. Roddy and Daniel Wyand, defendants, in a plea of debt, a manifest error has intervened, to the great damage of the said plaintiff, as in and by their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and full and speedy justice should be done to the parties aforesaid in this behalf—

You are hereby commanded that, if judgment therein be given, then, under your seal, you distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Roger B. Taney, esquire, chief justice of the Supreme Court of the United States, at Washington aforesaid, this day of January, A. D. 1863.

H. SPROUL, *Clerk.*

45 Jan'y 22d, 1863. Service accepted.

ROSS FORWARD
Att'y for Def'ts in Error.

Marshal's fees, $2 00.

46 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

I, Henry Sproul, clerk of the circuit court of the United States for the western district of Pennsylvania, at Pittsburgh, do hereby certify that the foregoing is a true and correct exemplification of the record and proceeding in the case of the [SEAL.] United States against John D. Roddy and Daniel Wyand, sureties of Harvey C. Marks, late postmaster at Somerset, Pennsylvania, as full and complete as the same remains of record and on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Pittsburgh, this 23d day of January, A. D. 1863, and of the independence of the United States the eighty-seventh.

H. SPROUL, *Clerk.*

Filed September 14, 1863.

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In the Supreme Court of the United States.

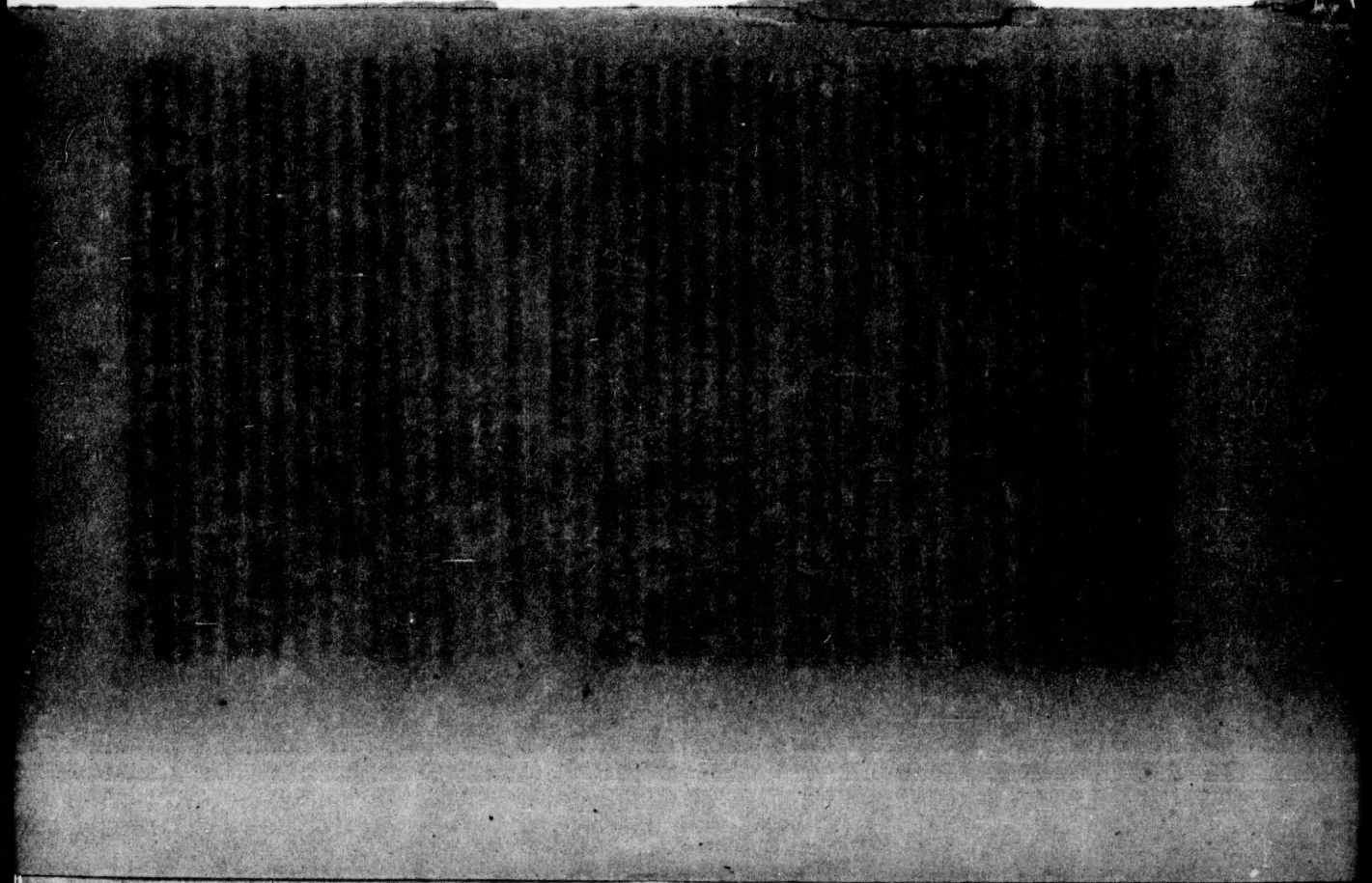
No. 136.

DECEMBER TERM, 1864.

THE UNITED STATES, (plaintiffs in error,) *vs.* JOHN D. RODDY and DANIEL WYAND, (defendants in error.)	In error to the circuit court of the United States for the western district of Pennsylvania.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.



In the Supreme Court of the United States.

DECEMBER TERM, 1864.

No. 136.

THE UNITED STATES, (plaintiffs in error,) *vs.* JOHN D. RODDY and DANIEL WYAND, (defendants in error.)	In error to the circuit court of the United States for the western district of Pennsylvania.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

STATEMENT.

This action was an action of debt, instituted on the 5th of June, 1861, by the United States against Harvey C. Marks, Daniel Wyand, and John D. Roddy, in the district court of the United States for the western district of Pennsylvania, on the official bond of the defendant, Harvey C. Marks, as postmaster at Somerset, in the State of Pennsylvania, the other defendants, Wyand and Roddy, being sureties therein.

The declaration assigned general breaches of the several and respective terms of the condition of the bond, and averred that there was due to the United States on account thereof the full amount of the obligation—the sum of six hundred dollars.

The defendants, Wyand and Roddy, filed two pleas to the said declaration.

The first was a general traverse of the averments in the declaration.

The second plea was in these words:

"And as a further plea in this behalf, the said Daniel Wyand and John D. Roddy, the sureties of the said Harvey C. Marks, come and plead that the United States of America, the plaintiff aforesaid, ought not to have or further maintain the aforesaid action against them because the suit was not brought within the statutory period; and of this," &c.

On the trial of the issue joined upon these pleas between the United States and the defendants, Wyand and Roddy, the United States, to maintain the issue on their part, gave in evidence a properly certified "*statement of the account of Harvey C. Marks, late postmaster at Somerset, in the State of Pennsylvania, as audited and adjusted*" in the office of the Auditor of the Treasury for the Post Office Department.

This statement of account, found on pp. 6–11 of the Record, contained, and charged the postmaster with, (1) certain balances due and payable to the United States on his respective quarterly returns as postmaster, rendered from the quarter beginning July 1, and ending September 30, 1853, to the quarter ending June 30, 1860, when he ceased to be postmaster; and (2) certain and various amounts of money, being double the value of the postages, estimated agreeably to the 32d section of the act of March 3, 1825, received during certain respective quarters of the years he remained in office, and for which Mr. Marks neglected to render his accounts in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith.

The second class of charges against the postmaster arose, and were embraced in the statement furnished by the auditor, under the provision of the 32d section of the act of March 3, 1825, (4 Stat., 102,) to the following effect:

"If any postmaster shall neglect to render his accounts for one month after the time, and in the form and manner prescribed by law, and by the Postmaster General's instructions conformable therewith, he shall forfeit double the value of the postages which shall have arisen at the same office in any equal portion of time previous or subsequent thereto; to be recovered by the Postmaster General, (now the United States, 13th section of act of July 2, 1836,) in an action of debt on the bond against the postmaster and securities, and for which the securities shall be liable."

The whole amount chargeable against the late postmaster, according to the Auditor's statement, made up as described, was $7,948 08. The statement aforesaid also exhibited the credits to which he was entitled for various sums of money paid by him, from time to time, during the years from 1853 to 1860, on account of the Post Office Department; and the aggregate of these credits was found to be $1,948 66.

The United States, after giving in evidence the bond in question, and this certified statement of the account of the late postmaster, rested their case.

The defendants gave no evidence, but asked the learned district judge to charge the jury, under their second plea, "that the Postmaster General having failed to institute suit against Harvey C. Marks, the postmaster, and his sureties, for more than two years after the first default of said postmaster, there can be no recovery in this case against John D. Roddy and Daniel Wyand, the sureties, and the verdict must be for the defendants." (Record, p. 18.)

The district judge refused to instruct the jury as requested, and charged them, "*that the limitation contained in the proviso to the 3d section of the act of March, 1825, is a bar only to the recovery of the several balances accruing more than two years before the institution of the suit. For the sums which accrued within two years the plaintiff is entitled to recover not exceeding the penalty of the bond.*"

The defendants thereupon excepted to the foregoing charge and instructions of the district court. (Record, p. 22.)

The jury having found a verdict for the United States, a judgment thereupon was entered for the amount of the bond, to be discharged by the payment of the sum of six hundred dollars.

The defendants then removed the cause into the circuit court for the western district of Pennsylvania, and assigned for error the foregoing charge and instructions of the district court.

The circuit court reversed the said judgment of the district court and awarded a *venire de novo* if requested by the United States.

The case is now before this court upon a writ of error to the said circuit court, sued out by the United States; the general error assigned being the reversal by that court of the said judgment of the district court. (Record, p. 22.)

ARGUMENT.

It is apparent from the foregoing statement that but a single, and very narrow, question is presented by this record.

The 3d section of the act of 3d March, 1825, (4 Stat., 102,) establishing and regulating the Post Office Department of the government, provides that "it shall be the duty of the Postmaster General, upon the appointment of any postmaster, to require and take of such postmaster bond, with good and approved security, in such penalty as

he may judge sufficient, conditioned for the faithful discharge of all the duties of such postmaster required by law, or which may be required by any instruction or general rule, for the government of the department: *Provided, however*, That if default shall be made by the postmaster aforesaid, at any time, and the Postmaster General shall fail to institute suit against such postmaster and said sureties for two years from and after such default shall be made, then and in that case the said sureties shall not be held liable to the United States, nor shall suit be instituted against them." It was upon the foregoing *proviso* that the defendant's second plea was based, and has been sustained by the circuit court.

A convenient abstract of the account in question is given in the bill of exceptions. (Record, p. 21.) It will be perceived that the postmaster's indebtedness to the government prior to *June* 30, 1857, is not altogether satisfied by applying *all* the credits allowed to him during the *whole* period of time from 1853, when the first default occurred, to June 30, 1860, when he retired from office, to the payment or extinguishment of the earlier balances or defaults. At the termination of the quarter ending June 30, 1857, he was in debt to the government to the amount of $2,158 46. The credits to which the postmaster was entitled for moneys paid to or on account of the department during the entire period from 1853 to 1860 (June 30th) amount to $1,948 66. Under the rule of the case of Jones *vs.* The United States, (7 Howard, 687,) the entire amount of these credits was applicable to the extinguishment of the several defaults as they had arisen from 1853 downward. Such appropriation being made of the whole amount of the credits as stated, the respective balances of dates prior to the balance dated June 30, 1857, would be extinguished, but it would leave a portion of the balance dated June 30, 1857, unsatisfied.

The defendants contended, therefore, that inasmuch as suit had not been brought on the bond till June 5th, 1861, more than two years after the 30th of June, 1857, the act of 1825, by the provision which has been referred to, barred the recovery of all and every one of the balances or defaults, and of every part of them, that accrued subsequently to the quarter ending on that day, (June 30, 1857.) The United States, however, contended in the district court, and that court so instructed the jury, that they were precluded from recovering only the amounts of those sev-

eral balances or defaults, of dates subsequent to June 30th, 1857, which accrued more than two years before the institution of the suit, but that their right to recover the balances or defaults which came due and arose *within* two years before the institution of the suit, was not affected by the third section or any provision of the statute of 1825. The United States, in other words, admitted that they could not recover those balances which became due and payable *before June* 6, 1859, but claimed their right to recover, not exceeding the penalty of the bond, the amount of the several balances which fell due, by reason of the postmaster's default, *after* that date, (June 6, 1859,) the suit having been brought within two years therefrom, (June 5, 1861.) (See Record, p. 21.)

The district court, having instructed the jury, as has been stated, overruling the defendant's plea, the question of the correctness of the position thus taken on the trial by the United States was brought by writ of error before the circuit court. That court sustained the position of the defendant on the trial, and reversed the decision of the district court. The question of the true construction and precise effect of the proviso to the third section of the act of March 3, 1825, is, therefore, now fairly before this court for final determination. We respectfully submit that the learned circuit court erred in its reading of the statute of 1825. What was the action? What was sought to be enforced against the defendants? The action was debt on a bond, given conformably to the third section of the act of 1825, conditioned for the faithful discharge of all the duties of the postmaster required by law, or which may be required by any rule or instruction of the department.

One of the duties imposed upon the postmaster by the thirty-first section of the act under consideration—a duty, therefore, "required by law"—was to render his account and pay over to the Postmaster General the balance by him due at the end of every three months.

The act further affixed a penalty to such neglect. The postmaster was liable, by the thirty-second section, to forfeit double the value of the postages which arose at the same office in any equal portion of time previous or subsequent thereto. This penalty was recoverable in an action of debt on the bond.

At the end of every quarter the accounts for which he neglected to render, and the balance due for which he neglected to pay, the postmaster and his sureties were,

therefore, liable to be sued, both for the money balance due the government and the amount of the penalty liquidated as stated. We find, accordingly, in the Auditor's statement, these two class of claims arising in each quarter of every year distinctly set forth.

In case of neglect on the part of the postmaster to render his accounts at the end of any quarter, and his default in paying over the balance then due, the act required the Postmaster General to cause suit to be commenced against the officer on his official bond. Immediately, therefore, on the failure of the postmaster, at the end of any quarter, to perform this duty—as soon as any particular quarter expired and the postmaster was found in default as stated—the condition was broken, the liability of the sureties arose, and it was the duty of the Postmaster General to enforce their liability by suit on the bond. So each succeeding default, at the end of every subsequent period of three months, gave rise to a separate and distinct cause of action.

Now we recall here the words of the limitation proviso of the third section of the act. They are: "That if default shall be made by the postmaster *at any time*, and the Postmaster General shall fail to institute suit against such postmaster and the said sureties for two years from and after SUCH default shall be made, then and in that case the said sureties shall not be held liable to the United States," &c.

So that when *each* default was made as stated, and the Postmaster General failed to institute suit against the postmaster and his sureties for two years from and after *such* default was made, the liability of the sureties for and on account of *that default* ceased and determined.

This, we respectfully submit, is the fair and proper reading of the proviso. We contend that it is fairly interpretable, when read in connexion with the other sections of the statute, as discharging the sureties of a postmaster from liability for each particular default, *and for that only*, which is not claimed by the United States by suit on the bond for more than two years after the particular default occurred, and is not to be construed as destroying the right of the United States to recover for those defaults which are sued for within the statutory period.

Mr. Marks, the late Somerset postmaster, first made default at the end of the quarter terminating on *September* 30, 1853. He neglected to pay the balance due to the United States according to his return for that quarter.

Immediately then it became the duty of the department, by the words of the thirty-first section of the act, to sue the postmaster and his sureties. Judge McLean ruled that the statute in such case begins to run from the time the law requires the payment to be made, and not from the time the postmaster fails to pay the draft of the department. (1 McLean, 220.) If suit had been instituted within two years from that date, the balance due September 30, 1853, would have been recoverable. But suit having been postponed till June, 1860, of course the sureties were discharged from liability for *that* quarter. The same remarks are applicable to each particular default from September, 1853, downward, until we come to the five last defaults of date, respectively, 30th June, 1859; 30th September, 1859; 31st December, 1859; 31st March, 1860, and 30th June, 1860. These were sued for within the statutory period, and, according to our view, were clearly recoverable on the bond against the defendants. (Record, p. 21.)

The circuit court has said that the postmaster *first* made default on the *30th of June*, 1857. The fact, however, is, as has been seen, that the first default was made *September 30th*, 1853; for at the end of the quarter, terminating on that day, the postmaster failed to pay the balance due the United States. It is true that by applying, under the rule of Jones *vs.* United States, (7 Howard, 687,) the entire amount of money paid by the officer, during the whole period through which the account runs, to the extinguishment of the respective defaults, beginning with the one of date September 30, 1853, as they occurred, the balance due *June* 30, 1857, is not entirely satisfied; but the default, in contemplation of law, did not begin at that date. *One* of the defaults then occurred, and that, we have conceded, cannot be recovered in this suit, because it was not sued for in the time designated by the statute. But it cannot *aptly* be said that *the default*, or the *first* default, occurred at the termination of the quarter ending June 30, 1857. The first default happened in 1853, and there were succeeding defaults in the subsequent years continuing down to the quarter ending 30th June, 1860.

Each default might have been made the ground of a separate action on the bond, and each default, we contend, must stand *separate* and *alone* when the question of the application of the statute of limitation is under consideration. One default has nothing whatever to do, it is respectfully submitted, with prior or subsequent defaults, when the United

States are seeking to enforce their rights on a postmaster's bond.

If the United States neglect, through the laches of their postal agents, to bring suit for a particular default on the part of the postmaster, within the time limited by law for the institution of such suit, the United States must suffer the consequence that flows, under the law, from such neglect; that consequence is, we submit, the discharge of the liability of the securities for the *particular debt* resulting from that *particular* default. But in regard to subsequent defaults, we see not how they can be affected, if they are placed in suit within two years after they occurred, by the negligence which may have occurred with respect to the enforcement of the remedy for the recovery of a prior breach or prior breaches of the bond.

Certainly, such a construction of the 3d section of the act of 1825 as the one we contend for confers as liberal and as ample a benefit upon the sureties as they could well ask, or as Congress could, with any propriety, confer upon them. The statute was adopted, it is true, for the benefit of securities, and to excite the utmost vigilance in the department; and we may agree entirely with Mr. Justice McLean, (1 McLean, 218,) that no very strong reason exists why, on general principles, all statutes of limitation should not run against the government in case of securities. But the fact is, as Mr. Justice McLean himself states, that Congress has departed from its usual course and ordinary policy on the subject of the responsibility of sureties in official bonds, in providing the present limitation with respect to the liability of the sureties of postmasters. The legislation under consideration is in derogation of the well-established rule, that a government cannot be guilty of laches, and in opposition to the general policy of the legislation of the Union. That fact must be remembered in construing and giving effect to the statute.

It must be fairly construed, and due effect must be given to it by the courts, according to, and within the just import of, the words employed. That is the only sound principle of judicial interpretation applicable to the statute. If the principle should be applied by this court, we believe that the effect we have contended for, and that effect only, will be given to the present enactment.

Any other construction of the law would give such effect to it as would render it necessary for the Post Office Department to exact new security from every postmaster on

whose bond it had neglected to bring suit for more than two years after any particular default occurred.

The bond, on the principle contended for by the defendants, is of no force or effect whatever after two years have elapsed from any failure of the postmaster to comply with its condition. Not only are the sureties relieved from liability on account of the particular failure, but their bond is, in effect, cancelled, invalidated, destroyed.

If the government is to be secured against further and subsequent defaults, the department must see to it that a new bond is prepared, executed, and approved, and in the mean time, pending the execution and approval of the new bond, the postmaster is under no security for the faithful discharge of his duty, and the government is without protection against any malfeasance or misfeasance that it may enter into his mind or heart to conceive or commit.

There may be very good reasons, and there often are, why the department in particular cases omits to bring suits on such bonds immediately upon the failure of the officers to pay the balances at the expiration of the respective quarters of the year. Such suits always involve more or less expense to the government. Very often it is a convenience to the postal service to allow balances to remain in the hands of postmasters in various sections of the country, because payments can easily be made, by means of drafts on the officers, to carriers of the mails and other persons in the employment of the department for services rendered the government. Payments made in that way by the postmasters, from time to time, in many cases extinguish prior balances, and often, when the officers retire from the public service, they are found, on the final adjustment of their accounts, to owe nothing to the government.

If this court shall sustain the view taken by the learned Mr. Justice Grier, in the court below, this whole system of debits and credits in post office accounts which has been pursued from the earliest times in the history of the government, and with considerable advantage to the department, will be destroyed, and a system of postal business will be inaugurated which will flood the courts with trifling lawsuits, and necessitate the constant exaction by the department of new security.

It is submitted that Congress, while properly protecting sureties to the extent of relieving them from liability from

any default not prosecuted till after two years from its date, did not intend to affect the efficiency of their bonds with respect to separate and distinct defaults occurring within two years from the institution of the suit; and if this court uphold that view, the judgment of the circuit court must be reversed.

The question now submitted, it may be remarked, is one of the first impression; and this writ of error has been prosecuted in order that the officers of the postal department may learn what is the opinion upon the question of the court of last resort.

JAMES SPEED, *Attorney General.*
J. HUBLEY ASHTON,
Assistant Attorney General.

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In Supreme Court of United States.

UNITED STATES *vs.* RODDY & WEYAND.

Brief for Defendants.

The defendants, John D. Roddy and Daniel Weyand, were sureties of Harvey Marks, Postmaster at Somerset, Penn., and this is a suit on their bond.

Marks was appointed in June, 1853, and removed in July, 1860. He became a defaulter at the end of his first quarter (so says the Attorney General, Brief, p. 7.) He was declared a defaulter by the Post Office Department in Feb., 1856. (Rec., p. 7.) Judge Grier speaks of his first default as having occurred 30 June, 1857. (Rec., p. 19.) It makes no difference to the case which of these is the true date. It is certain that his first default was at least as early as June, 1857, and he continued to be in default until his removal from office in July, 1860. The suit was not brought against his sureties until June, 1861.

The defence is that the suit was not brought within two years after the default. It is founded upon that provision in the Act of 3d March, 1825, (sec. 3,) which declares that "if default shall be made by the postmaster

at any time, and the Postmaster General shall fail to institute suit against such postmaster and his sureties *for two years from and after such default shall be made*, then and in that case the said sureties shall *not be held liable* to the United States, nor shall suit be instituted against them."

The Attorney General argues that this law does not require suit to be brought on the bond within two years after the default which the postmaster has "*at any time*" committed, but only forbids a recovery for defalcations which are more than two years old. But the statute is a distinct prohibition against bringing suit on a bond or holding sureties liable at all, unless the action be commenced within two years after a default at any time committed. No matter, therefore, how many subsequent defaults the principal may have committed the sureties are discharged if they can show that the first one was made more than two years before suit brought.

It is enough that the law is so written. But certainly it ought to be so; for the interests of the Government and every principle of public policy, as well as justice to sureties, require that defalcations like these should be stopped as soon as possible after they begin to occur.

I profess myself unable to comprehend the last paragraph but one on page 9 of the Attorney General's brief. He says that if the decision of the circuit court be sustained the whole system of debits and credits in post office accounts will be destroyed. Is it possible that any department of this Government has established a regular *system* of keeping known defaulters in office without taking any measures against them or giving any notice to their sureties? I had thought this an exceptional case, but the Attorney General says, it is not only a system now but has been a system "from the earliest times." What is more astonishing still is the opinion of the law officer, that it has been "pursued with considerable advantage to the department." What advantage can the department possibly derive from the defalcations of its

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officers, which are thus encouraged? It must certainly lose money in other cases as it has lost in this case, and would lose even if the judgment were reversed. The system, it seems, cannot be stopped without "flooding the courts with trifling law suits"—so many defalcations has it already produced. But how would the Attorney General avoid these trifling suits? By nursing them until they become great suits? Or by giving up the rights of the Government altogether, and letting its wrongs be wholly unredressed?

I cannot help but think that the Attorney General is altogether mistaken. I believe there is no system of accounts in the Post Office Department which will be destroyed, if defaulters are not removed and their bonds sued within two years after their defalcation takes place.

Mr. Justice Grier, in the circuit court, held that the sureties were discharged by the delay of the Post Office Department to bring suit within two years after the first defalcations. We submit that this ruling was right, and refer the court to the reasons which he gave for it, (Rec., p. 19,) as being too conclusive to need any further enforcement.

"Here," says the Judge, "was a case of gross negligence on the part of the officers of the General Post Office." It will not be denied that this is true as matter of fact. If the department had performed its duty the defalcations now sued for could never have occurred. The first offence was committed by the local officer at Somerset. The subsequent offences were caused not by him alone but by the officers at Washington in combination with him. Now, what was the contract of the sureties? Certainly it made them responsible for the malfeasance of their principal only. They were not sureties for the P. M. General and his assistants here. It would, without doubt, be as the judge says, unjust to make the sureties "the victims of such conduct in the officers of the Government."